

representation.⁷⁹ The Commission believes that Phlx's revised governing documents, as proposed, will continue to provide for the fair representation of Phlx Members and Member Organizations and also will provide board qualification requirements that are consistent with the Act and consistent with those that have been approved previously by the Commission for NASDAQ.

The Commission finds that the Exchange's proposal to modify the composition of Business Conduct Committee is consistent with the Act. The proposed revisions to the composition of the Business Conduct Committee will make it identical to the composition of the equivalent NASDAQ committee (the NASDAQ Review Council).⁸⁰ In particular, the Exchange proposes to increase the number of Non-Industry and Member Representative Directors on the committee as well as require the Business Conduct Committee to be comprised of a number of Member Representative Directors that equals at least 20% of the total number of members of the committee.⁸¹

In addition, other proposed changes to the Exchange's committees will not materially affect the compositional requirements that are currently in place. For example, the Quality of Markets and Market Operations Review Committees are currently, and will remain, subject to the same compositional requirement for Member Representative Directors, and the Regulatory Oversight Committee will continue to be comprised of Public Directors. According to the Exchange, these compositional requirements are designed to foster the Exchange's ability to protect the public interest and foster the integrity of the Exchange by bringing a unique, unbiased perspective to these committees and the work that they perform. Among other things, the Exchange intends for these changes to increase representation of Non-Industry Directors on the committees. The Commission notes these proposed changes are designed to align Phlx's compositional requirements with those of its affiliated exchange, NASDAQ,

which were previously approved by the Commission.⁸²

The Commission finds that the Exchange's proposal to eliminate FCO Participations is also consistent with the Act. Importantly, the Exchange represents that it currently does not have any persons who access the Exchange's FCO market exclusively through an FCO Participation, as such participations are no longer utilized on the Exchange in light of the ability, since the Exchange demutualized, of any permit holder to trade FCO Participations by means of a general all-purpose trading permit. As a result, the Commission believes that the elimination of FCO Participations will not adversely impact the ability of market participants to continue to access and trade on the Exchange FCO market.

The Commission believes that the remaining revisions to the LLC Agreement, By-Laws, Rules, Advices, and Regulations, including those related to the Exchange's organizational structure, renaming the Board of Governors the Board of Directors, and identifying NASDAQ OMX as the single Stockholder, are consistent with the Act and are designed to update the Exchange's governance process and create equivalent governing standards between Phlx and NASDAQ, which are both controlled by NASDAQ OMX. The proposed changes are designed to conform certain Phlx provisions to more closely parallel provisions maintained by NASDAQ that were previously approved by the Commission.

Finally, the Exchange's proposed conforming changes to various provisions of the LLC Agreement, By-Laws, Rules, Advices, and Regulations to amend cross references, update terminology, and rename and renumber sections are consistent with the Act and are intended to make non-material revisions to update and correct various outdated references. For example, the revisions to eliminate references to FCO Participations and to XLE, as well as other now-obsolete terms are reasonable and are not intended to constitute a material or substantive change to any provision. The Commission finds that these changes are technical in nature and will provide clarity to the Exchange's LLC Agreement, By-Laws, Rules, Advices, and Regulations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸³ that the

proposed rule change (SR-Phlx-2011-13), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁴

Cathy H. Ahn,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64335; File No. SR-NYSEAmex-2011-25]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 72(d) Regarding Agency Cross Transactions

April 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on April 19, 2011, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 72(d)—NYSE Amex Equities with respect to agency cross transactions. The text of the proposed rule change is available at the Exchange, at <http://www.nyse.com>, at the Commission's Public Reference Room, and at <http://www.sec.gov>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

⁷⁹ See NASDAQ Approval Order, *supra* note 71, 71 FR at 3553.

⁸⁰ See *id.* at 3554 ("The Commission believes that [NASDAQ's] proposed committees should enable it to carry out its responsibilities under the Exchange Act."). See also Notice, *supra* note 3, 76 FR at 12187.

⁸¹ Currently, the Business Conduct Committee is required to have not less than one Member who conducts options business at the Exchange, which would provide less than 20% member representation if the committee had more than five members.

⁸² See NASDAQ Approval Order, *supra* note 71, 71 FR at 3554.

⁸³ 15 U.S.C. 78s(b)(2).

⁸⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 72(d)—NYSE Amex Equities with respect to agency cross transactions.³

Under Rule 72(d)—NYSE Amex Equities, when a member⁴ has an order to buy and an order to sell an equivalent amount of the same security, and both orders are for 25,000 shares or more, the member may “cross” those orders at a price at or within the Exchange best bid or offer and does not have to break up the cross transaction to trade with any bids or offers previously displayed at the Exchange best bid or offer, including any interest with priority (a “72(d) crossing transaction”).⁵ Rule 72(d)—NYSE Amex Equities further provides that a member can effect a 72(d) crossing transaction only for the accounts of persons who are not members or member organizations. Accordingly, a Floor broker cannot use this provision for customers who are unaffiliated NYSE Amex members or member organizations.

The Exchange proposes to amend Rule 72(d)—NYSE Amex Equities to change the required minimum share

size from 25,000 and instead require that both the order to buy and the order to sell be “block” orders, which the Exchange proposes to define for purposes of Rule 72 as at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less.⁶ This proposed change would more closely align agency cross transactions with other “block” orders with respect to the minimum applicable order size.⁷

The Exchange further proposes to amend Rule 72(d)—NYSE Amex Equities to modify the current restriction that a member may not effect a 72(d) crossing transaction for the account of a member or member organization. The Exchange instead proposes to conform Rule 72(d)—NYSE Amex Equities to Rule 90—NYSE Amex Equities, and restrict a member from effecting a 72(d) crossing transaction for the account of such member or member organization, an account of an associated person, or an account with respect to which the member, member organization or associated person thereof exercises investment discretion. This proposed change would enable Floor brokers to effect 72(d) crossing transactions on behalf of unaffiliated members or member organizations.

The Exchange also proposes to update a reference to the term “priority” within Rule 72(d)—NYSE Amex Equities, which currently provides that a member who is providing a better price to one side of the cross transaction must trade with all other market interest *having priority* at that price before trading with any part of the cross transaction. The Exchange proposes to modify this requirement so that the member seeking to provide price improvement must instead trade with all other displayed market interest on the Exchange at that price before trading with the cross transaction. The proposed change would expand protection for interest on the Display Book[®] ⁸ by requiring the member who is providing price improvement to trade not only with

priority interest, but with all displayed interest in the Display Book.⁹ The Exchange proposes to similarly incorporate this change in Example 1 within Rule 72(d)—NYSE Amex Equities by deleting the clause related to “priority” and replacing it with a reference to “displayed.”

Finally, the Exchange proposes to remove the reference to “prevailing quotation” within Rule 72(d)—NYSE Amex Equities and replace it with a reference to the “Exchange best bid or offer.” This change would provide clarity regarding the price at which a member could effect a 72(d) crossing transaction, but does not alter the meaning of the current rule or the mechanics of a 72(d) crossing transaction.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change would more closely align Rule 72(d)—NYSE Amex Equities with other Exchange rules concerning block-sized orders and the accounts for which agency orders may be crossed while also expanding protection for interest on the Display Book by requiring that such interest must be executed before a member could break up an agency cross.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

³ The provisions of Rule 72 are in effect during a pilot set to end on August 1, 2011. See Securities Exchange Act Release Nos. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex-2008-62) (approving the Exchange's merger with the New York Stock Exchange LLC (“NYSE”)) and 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10) (conforming the Exchange's rules with those of NYSE, including establishing the “New Market Model Pilot” or “Pilot”). See also Securities Exchange Act Release Nos. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR-NYSEAmex-2009-65) (extending Pilot to November 30, 2009); 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR-NYSEAmex-2009-83) (extending Pilot to March 30, 2010); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR-NYSEAmex-2010-28) (extending Pilot to September 30, 2010); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR-NYSEAmex-2010-86) (extending Pilot to January 31, 2011); and 63620 (December 29, 2010), 76 FR 598 (January 5, 2011) (SR-NYSEAmex-2010-122) (extending Pilot to August 1, 2011).

⁴ The reference to “member” in Rule 72(d)—NYSE Amex Equities and this rule proposal means only Floor broker members. Designated Market Makers (“DMMs”), while members of the Exchange, do not have any agency relationships, and are therefore not able to effect this type of cross.

⁵ A transaction effected at the cross price in reliance on Rule 72(d)—NYSE Amex Equities is printed as a “stopped stock” to denote that the transaction was outside of normal market procedures. See Rule 128A.16—NYSE Amex Equities. The Exchange notes that block-sized crosses outside of the Exchange best bid or offer are addressed under Rule 127—NYSE Amex Equities.

⁶ The Exchange proposes to include the “block” definition as new Supplementary Material .10 to Rule 72(d)—NYSE Amex Equities.

⁷ See, e.g., Rule 104—NYSE Amex Equities and Rule 127—NYSE Amex Equities, which provide that a “block” shall be at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less.

⁸ The Display Book system is an order management and execution facility. The Display Book receives and displays orders to the DMMs, contains order information and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book is connected to a number of other Exchange systems for the purposes of comparison, surveillance and reporting information to customers and other market data and national market systems.

⁹ The Exchange notes that displayed interest does not include the reserve portion of any orders on the Display Book. This proposed amendment to Rule 72(d) does not change the obligation of the member providing price improvement to comply with Rule 90.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File

Number SR-NYSEAmex-2011-25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2011-25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2011-25 and should be submitted on or before May 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Cathy H. Ahn,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64341; File No. SR-FINRA-2011-017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 5131 (New Issue Allocations and Distributions)

April 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 18, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 5131 (New Issue Allocations and Distributions) to simplify the spinning provision and to delay the implementation date of paragraphs (b) and (d)(4).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 29, 2010, FINRA issued *Regulatory Notice 10-60* announcing

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.